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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,310	04/02/2001	Kouichi Nagaki	Q63784	7350

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SUGHRUE, MION, ZINN, MACPEAK & SEAS  
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Washington, DC 20037

EXAMINER

LOUIS JACQUES, JACQUES H

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/822,310

Applicant(s)

NAGAKI ET AL.

Examiner

Jacques H Louis-Jacques

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5-28 and 36-47 is/are allowed.
- 6) ☒ Claim(s) 29-31, 34 and 35 is/are rejected.
- 7) ☒ Claim(s) 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 29-31 and 34-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Crowley et al [6,073,076].

Crowley et al discloses a memory management for navigation system, wherein geographic data are made of a plurality of data record organized into parcels, each of which contains a portions of the plurality of data records. According to Crowley et al, there is provided a data storage for storing geographic data, e.g., map information and a navigation control for controlling navigational operation using the map data. See figure 1. According further to Crowley et al, the storage device is a nonvolatile memory and wherein the memory storage is defragmented to improve the performance (speed) of the system. See columns 3, 4, 6, 13-14, and 18. Also, as shown in 10, the system of Crowley et al provides the provision of canceling or interrupting the defragmenting process. Also, according to Crowley et al, the operator is provided with a message. Crowley et al further discloses as evident in column a heading reading and writing information, and whereon defragmenting is executed in the vicinity of the information.

***Response to Amendments & Arguments***

3. The amendments along with the arguments filed therewith on December 24, 2003 have been entered and carefully considered by the examiner.

In light of the amendments, the rejection under 35 USC 112, 2<sup>nd</sup> paragraph has been withdrawn.

Claims 1-3 and 5-47 are presented for examination.

Claims 1-3, 5-28, and 36-47 are allowed over the prior art of record; Claims 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims; and Claims 29-31 and 34-35 are being rejected. Claim 4 had been cancelled.

As a formal matter, it is noted that claim 31 was inadvertently omitted from the prior art rejection heading. However, the correction of this omission should not constitute as new ground of rejection. Reference was given to column 4 wherein it is disclosed that the storage device being defragmented is a hard disk mounted in a hard disk apparatus. In addition, in paragraph 2, under the heading "Response to Amendments & Arguments", reference was made to which claims have been allowed, which claims have been objected to and which claims have been rejected. In the above-mentioned paragraph in the previous office action, it was indicated, "Claims 29-31, 34 and 25 are rejected" (page 2). Furthermore, in a brief description of the patent, it was noted, "...The storage device is non-volatile memory. See figure 1. In columns 3 and 4, in particular, Crowley et al describes that the memory storage device is a non-volatile memory and that the storage

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device holds navigation map data. The storage device being defragmented, according to Crowley et al, is hard disk. See also columns 16-18.”

Applicants submit that the rejected claims (29-31 and 34-35) are patentable over the cited reference. Applicants argued that “Crowley contains absolutely no description of any processing when the defragmenting of the memory 16 is cancelled or interrupted ... Thus, the reference does not suggest that progress data, which indicates the progress of the defragmenting process, is generated and preserved when the defragmentation of the memory 16 is interrupted.” Emphasis added. The examiner respectfully disagrees.

As Applicants recognize, Crowley discloses a queue manager 404 for assisting in the defragmentation of the memory, as part of the navigation application 18 (figure 2). As described in column 18, in particular, defragmentation progress (i.e., being successful) is recorded in a statistics structure with the parcel manager 59, which may then use these statistics to control the frequency of defragmentation intelligently. The storage device being defragmented is a hard disk mounted in a hard disk apparatus. Note also in column 18, if defragmentation does not produce sufficient room for the new parcel, parcel manager 59 discards via least-recently-used algorithm. Crowley further explains that the algorithm takes age into consideration. In other words, the system stores the defragmentation process as previous defragmentation data are used.

It is agreed that Crowley does not use the phrases “preserving defragmenting progress ... if the defragmenting processing under performance is interrupted. However, when reading the disclosure of the memory management for navigation system of Crowley including the functions of the queue manager and the parcel manager 59, one skilled in

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the art would know the defragmenting progress data indicative of a progress condition of the defragmenting processing is “persevered”, i.e., “recorded” (as described). In addition, as explained above, Crowley discloses an algorithm that age of the defragmentation data into consideration, where that least-recently-used data are discarded. Furthermore, a statistics structure for the defragmentation is recorded. In light of the above, it is clear, when reading in the context of the invention, that the defragmenting process data is “preserved”.

Accordingly, the rejection applied against the claims (29-31 and 34-45) is sustained and this office action is made final.

To the extent that the response to the applicant’s arguments may have mentioned new portions of the prior art references, which were not used in the prior office action, this does not constitute new a new ground of rejection. It is clear that the prior art reference is of record and has been considered entirely by applicant. See In re Boyer, 363 F.2d 455, 458 n.2, 150 USPQ 441, 444, n.2 (CCPA 1966) and In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 267 (CCPA 1961).

The mere fact that additional portions of the same reference may have been mentioned or relied upon does not constitute new ground of rejection. In re Meinhardt, 392, F.2d 273, 280, 157 USPQ 270, 275 (CCPA 1968).

***Allowable Subject Matter***

4. Claims 1-3, 5-28, and 36-47 are allowed over the prior art of record.

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5. Claims 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H Louis-Jacques whose telephone number is 703-305-9757. The examiner can normally be reached on M-Th 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on 703-308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1111.

Jacques H Louis-Jacques  
Primary Examiner  
Art Unit 3661

/jlj  
February 2, 2004

*Jacques H. Louis-Jacques*  
JACQUES H. LOUIS-JACQUES  
PRIMARY EXAMINER